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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,427	04/12/2004	Liam Casey	120-343	2564
34845	7590	01/23/2008		
McGUINNESS & MANARAS LLP				
125 NAGOG PARK				
ACTON, MA 01720				
EXAMINER				
GAY, SONIA L				
ART UNIT		PAPER NUMBER		
4183				
NOTIFICATION DATE		DELIVERY MODE		
01/23/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary****Application No.**

10/822,427

**Applicant(s)**

CASEY ET AL.

**Examiner**

SONIA GAY

**Art Unit**

4183

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CD/CD)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because the number of words exceeds the 150 word count limit. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 7 – 8, and 14 are rejected under 35 U.S.C. 102 (e) as being anticipated by Michelson et al. (US 7,283,541).

Michelson et al. teaches a method ( **Fig. 4**, **Fig. 5** and Abstract) and a system(**Fig. 2**, **Fig.3**) for providing voice communications over a packet-based data communication network, comprising: receiving a call with request processing logic ( **Fig. 3** 304 and column 4 lines 13 – 20; **Fig. 5** 502); determining whether a total delay for the requested call would exceed a predetermined maximum delay ( 150 ms – column 5 lines 4, 50-51) if a packetization delay component ( delay packetization- column 5 lines 20 – 21) is increased for packets in the requested call using delay determining logic (column 4 lines 23 – 29, 43-47; column 5 lines 2-6, 11-21, 44-54; column 7 lines 56 - 65 ); in the event that the packetization delay can be increased without the total delay exceeding the maximum delay, increasing a size of packets used in the call using packet size increasing logic ( column 5 lines 44 – 54; column 6 lines 9-13, 34 – 39, 47

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- 53), wherein the maximum delay is a value that cannot be exceeded without adversely impacting the voice quality of the call ( column 5 lines 2 -6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2 – 6 and 9 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson et al. (US 7,283,541), in view of Baeder (US 2004/0156356), and further in view of Kotabe et al. ( US 2003/021904) , and further in view of Duffield et al. ( US 6,912,232).

Michelson et al. discloses the claimed method and system above, but fails to disclose the following: the method and system, wherein said determining with delay determining logic whether said total delay would exceed said predetermined maximum delay is responsive to a directory number of a calling party and called party phone; the method and system, wherein said determining with delay determining logic whether said total delay would exceed said predetermined maximum delay is responsive to stored information in a call server system indicating whether a called party phone is local to a calling party phone; the method and system further comprising determining with delay determining logic whether a calling party phone and a called party phone can process an increases packet size, and only increasing the size of the packets used in the call in the event that both said calling party phone and said called party phone can process said increased packet; the method and system, wherein said increasing said size of a packets used in said call comprises increasing with packet size increasing logic said size of

packets used in said call to a packet size above a default packet size ; and the method and system, further comprising determining with delay determining logic whether a phone terminating said requested call is being used through a virtual private network, and, in the event that said phone terminating said requested call is being used through a virtual private network, using a default size of packets for said requested call.

However, Baeder discloses the following: a method and system , wherein said determining with delay determining logic whether said total delay would exceed said predetermined maximum delay is responsive to information indicating whether a called party phone is local to a calling party phone ( [0009][0022][0044] [0045]) for the purpose of optimizing bandwidth utilization and thus improve voice quality ([0009]; Michelson -column 6 lines 3 - 10); a method and system of determining with delay determining logic whether said total delay would exceed said predetermined maximum delay is responsive to a directory number of both a calling and called party phone ([0021][0022]) for the purpose of categorizing calls to assign packet lengths for the voice data packets ([0034]); and, the method and system, wherein increasing said size of packets used in said call comprises increasing with packet increasing logic said size of packets used in said call to a packet size above a default packet size ( 20ms – [0003]) ([0034] [0037] [0048]) for the purpose of optimizing bandwidth utilization ([0009]; Michelson - column 6 lines 3 - 10).

Moreover, Kotabe et al. discloses a method and system of a calling party using a query packet to notify a called party of a maximum delay quantity of a packet transfer ([0024][0025][0061][0062] ) for the purpose of the enabling the called party to adaptively determine and optimize its own received packet buffering quantity for voice call quality in the system ( [0037]).

Additionally, Duffield et al. discloses a method and system of providing virtual private networks (VPNs) ( **Fig. 2** 210- 224) to customers ( **Fig. 2** 202-208)( **Fig. 2** 200 and column 3 lines 4 – 6, 10 – 15, 34-39) with service level agreements (SLAs) that have set quality of service (QoS) levels ( column 3 lines 40-51, 63 -66) for the purpose of providing guaranteed services including traffic characteristics such as reasonable delay to subscribers of the VPN (column 4 lines 13 - 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention as disclosed in Michelson et al. with the inventions disclosed in Baeder, Kotabe et al. and Duffield et al. as follows: the delay determining logic as disclosed above in Michelson et al. is responsive to a directory number or stored information in a call server system of a calling and called party phone in determining an increased voice packet size that would create a total delay to not exceed said predetermined maximum delay for the purpose of optimizing bandwidth utilization in a IP network; the delay determining logic as disclosed in Michelson et al. further determines whether a calling phone and a called party phone can process an increased packet size by sending a query packet from the calling party to notify the called party of the total delay associated with an increased packet size for the purpose of enabling the called party to optimize the received packet buffer to handle these packets; the destination gateway, TGW, as disclosed in Michelson et al. is connected to a VPN that terminates a telephone call using a default packet size for the purpose of providing guaranteed levels of service including total delay to the subscribers of the voice VPN; and, the packet increasing logic as disclosed in Michelson et al. increases the size of packets above a default

packet size for the purpose of optimizing bandwidth utilization according to the distance required to complete the telephone calls.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SONIA GAY whose telephone number is (571)270-1951. The examiner can normally be reached on Monday to Thursday from 7:30 AM to 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sonia Gay/  
Examiner, Art Unit 4183

January 15, 2008

/Len Tran/

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Supervisory Patent Examiner, Art Unit 4183